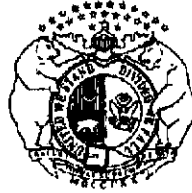


Before the  
Administrative Hearing Commission  
State of Missouri



DIRECTOR OF DEPARTMENT OF  
INSURANCE, FINANCIAL  
INSTITUTIONS & PROFESSIONAL  
REGISTRATION,

Petitioner,

vs.

KATHRYN B. WOLCOTT,

Respondent.

No. 09-1193 DI

**DECISION**

Kathryn B. Wolcott is subject to discipline because she failed to respond to two requests for information and because her insurance agent license was revoked in another state.

**Procedure**

On August 27, 2009, the Director of the Department of Insurance, Financial Institutions & Professional Registration ("the Director") filed a complaint seeking to discipline Wolcott. On September 22, 2009, we served Wolcott with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. Wolcott did not file an answer. On January 25, 2010, we held a hearing. Enforcement Counsel Elfin L. Noce represented the Director. Neither Wolcott nor anyone representing her appeared. The matter was ready for our decision on January 25, 2010, the date the transcript was filed.

The Director offered into evidence the request for admissions that was served on Wolcott on October 29, 2009. Wolcott did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.<sup>1</sup> Such a deemed admission can establish any fact or any application of law to fact.<sup>2</sup> That rule applies to all parties, including those acting *pro se*.<sup>3</sup> Section 536.073<sup>4</sup> and our Regulation 1 CSR 15-3.420(1) apply that rule to this case. The following facts are undisputed.

#### **Findings of Fact**

1. Wolcott was issued an insurance producer license on October 4, 2007. The license expired on October 4, 2009.

2. On March 19, 2009, Special Investigator Dennis Fitzpatrick mailed a letter to Wolcott requesting a detailed letter of explanation regarding allegations against her.

3. Wolcott did not respond to the letter.

4. On April 16, 2009, Fitzpatrick mailed a second letter to Wolcott, again requesting a detailed letter of explanation.

5. Wolcott again failed to respond to the letter.

6. On June 23, 2009, the Commissioner of Insurance of the State of Kansas revoked Wolcott's Kansas insurance agent license.

#### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>5</sup> The Director has the burden of proving that Wolcott has committed an act for which the law allows discipline.<sup>6</sup>

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<sup>1</sup>*Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

<sup>2</sup>*Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

<sup>3</sup>*Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

<sup>4</sup>RSMo 2000. Statutory references, unless otherwise noted, are to RSMo Supp. 2009.

<sup>5</sup>Section 621.045.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

Wolcott admitted facts and that those facts authorize discipline. But statutes and case law instruct that we must "separately and independently" determine whether such facts constitute cause for discipline.<sup>7</sup> Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

The Director argues that there is cause for discipline under § 375.141:

1. The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

\* \* \*

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

\* \* \*

(9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory[.]

#### Count I – License Revoked

The Director argues that Wolcott is subject to discipline because her Kansas insurance agent license was revoked. We agree. Wolcott is subject to discipline under § 375.141.1(9).

#### Count II – Violation of Regulation

The Director argues that Wolcott violated Regulation 20 CSR 100-4.100:

(2) Except as required under subsection (2)(B) –

(A) Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be

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<sup>7</sup>*Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay. .

(B) This rule shall not apply to any other statute or regulation which requires a different time period of a person to respond to an inquiry by the department. If another statute or regulation requires a shorter response time, the shorter response time shall be met. This regulation operates only in the absence of any other applicable laws.

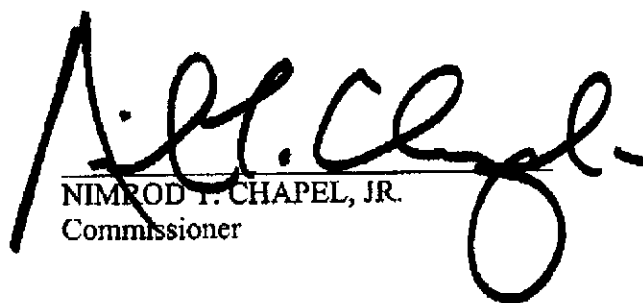
We agree that by failing to respond to the investigator's letters, Wolcott violated this regulation.

She is subject to discipline under § 375.141.1(2).

#### Summary

Wolcott is subject to discipline under § 375.141.1(2) and (9).

SO ORDERED on March 12, 2010.

  
NIMROD T. CHAPEL, JR.  
Commissioner